



Atty. Dkt. No. 028622-0151

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Wolfgang-Michael FRANZ, et al.
Title: USE OF G-CSF FOR TREATING ISCHEMIA
Appl. No.: 10/576,296
International Filing Date: 10/25/2004
371(c) Date: 7/15/2008
Examiner: Mertz, Prema Maria
Art Unit: 1646
Confirmation Number: 4483

RESPONSE TO SPECIES ELECTION

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In response to the restriction requirement set forth in the Office Action mailed August 5, 2010.

I. Election 1a

The Examiner alleges that the species listed in claims 3-6 are not so linked as to form a single general inventive concept under PCT Rule 13.1. Furthermore, the Examiner argues that different administration schedules reflect different method steps.

In response, Applicants hereby provisionally elect “administration of G-CSF after surgical or interventional procedure (claims 5 and 6) for examination, **with traverse**.

II. Election 1b

The Examiner alleges that the species listed are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In response, Applicants hereby provisionally elect “myocardial ischemia” (claim 7), with traverse. Additionally, Applicants provisionally elect “myocardial infarction” (claim 8) as the sub-species, with traverse.

III. Search of All Species Is Not Unduly Burdensome

Applicants traverse the species elections on the grounds that the search and examination of the remaining species is not unduly burdensome. According to MPEP section 803 “if a search and examination of an entire application can be made without serious burden, the Examiner must examine it on the merits, even though it includes claims to independent and distinct inventions.”

The invention is drawn to “treating organ dysfunction caused by ischemia comprising administering an effective amount of G-CSF.” Accordingly, the Examiner must search G-CSF as a treatment. This search will necessarily encompass treatments that occur before, after and during the surgical or interventional procedure. Thus, there would be no undue burden on the Examiner to review treatment before, after or during the surgical or interventional procedure.

Additionally, there would be no undue burden for the Examiner to search and examine the species of ischemia. As the literature for G-CSF is well established, review of these references regarding all of the species of the current claims is not an undue burden.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing or a credit card payment form being unsigned, providing incorrect information resulting in a rejected credit card transaction, or even entirely missing, the

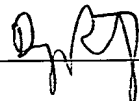
Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicant hereby petition for such extension under 37 C.F.R. §1.136 and authorizes payment of any such extension fees to Deposit Account No. 19-0741.

Respectfully submitted,

Date October 4, 2010

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By



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